IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.767 OF 2004

Union of India & Ors. ..Petitioners.

Vs.

Madhurajan Singh & Ors. ..
Respondents.

.....

Mr. Suresh Kumar for the Petitioners.
Mr. Ashok Dhamija for the Respondents.

....

CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J,

7th September, 2004.

P.C. :

1. The petitioners are aggrieved by the order passed by the Central Administrative Tribunal on 17th October, 2003 in Original Application Nos.1002 of 2002, 616 of 2003, 617 of 2003 and 708 of 2003.

2. The respondents who were working as Preventive Officers were promoted to the post of Superintendent of Customs (P) by Establishment Office Order No.276/2002 dated 23rd September, 2002 issued by the Commissioner of Customs (G). In Estt. Office

Order No.306/2002 dated 17th October, 2002, it is clearly mentioned that in partial modification of its Order No.276/2002 dated 23rd September, 2002 and in terms of Ministry's O.M. No.22011/4/91 Estt. (A) dated 14th September, 1992, officers figuring at Sr Nos.249 to 258 are promoted in officiating capacity until further orders. This fact is also clear from the pleadings of the petitioners and the reply filed by the respondents. The respondents who were eligible for promotion and were promoted in officiating capacity as Superintendents of Customs (P), had a right to be considered for promotion to the equivalent post of Appraiser. This position is settled by the Supreme Court in number of cases. The learned counsel for the petitioners has placed reliance on the judgment of the Apex Court in **Arun Kumar Chatterjee v. South Eastern Railway (**AIR 1985 SC 482). The Supreme Court has observed thus :

> "According to its ordinary connotation, the word "officiating" is generally used when a servant having held one post permanently or substantively is appointed to a post in a

higher rank, but not permanently or substantively, while still retaining his lien on his substantive post."

3. Reliance has also been placed on another case of the Apex Court in **Prem Nath v. State of Rajasthan** (AIR 1967 SC 1599), wherein the Supreme Court has observed that even if persons are appointed to officiate to such posts, since their appointment would not be substantive appointment, they would not acquire a lien thereon. Thus, it is clear that the officiating appointment does not become a lien on the higher post, but the lien continues to be on the lower feeder cadre if one is promoted to the officiating capacity.

4. In our opinion, the Central Administrative Tribunal has correctly appreciated the law which has been crystallized by the Supreme Court in number of cases. In our considered opinion, the impugned order requires no interference. This writ petition, being devoid of any merit, is dismissed.

5. The parties to act on an authenticated copy of this order issued by the office of this Court.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.